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Menis, Susanna (2020) Stewart Motha: Archiving Sovereignty: Law, History, Violence University of Michigan Press, USA, 2018, 224 pp, £19.95 (pbk), ISBN: 978-0472053865. [Book Review]

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***Archiving Sovereignty. Law, History, Violence* by Stewart Motha (USA: University of Michigan Press, 2018, 224 pp., £19.95 (pbk) ISBN 978-0472053865)**

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**Word count:** 1266

### **Abstract**

This is a review of the book *Archiving Sovereignty* by Stewart Motha. Typical of critical legal writing, the monograph challenges our conditioned perception about the sovereign State. As such, it provides us access to an archive of sovereign violence created by the law. It is argued that judicial decisions sustain and recreate sovereign power by way of destruction of facts. The focus here is on states with imperial histories, taking as case studies several islands in the Indian ocean region.

**Key words:** State sovereignty, law, history, violence, Indian Ocean region

***Archiving Sovereignty. Law, History, Violence* by Stewart Motha (USA: University of Michigan Press, 2018, 224 pp., £19.95 (pbk) ISBN 978-0472053865)**

Rumi's words echo in the distance- But don't be satisfied with stories, How things have gone with others, Unfold your own myth [...] But don't move the way fear makes you move.<sup>1</sup> A toxic capsule, a recipe for destruction- this is what Rumi warns us about human nature. We seek answers elsewhere, and we are easily led to believe, that the other is a threat. This is our limbic system, fundamental in allowing us to perceive the dangers of a charging mammoth or a starving lion; our human evolution and survival has depended on this alert. Developmental psychology, however, tells us that we have made some progress; our brain's frontal cortex has evolved; our empathic responses are far more enhanced. However, our conditioning for separation is deep, hindering us from seeing beyond our egoic self. The writing of history, or the not writing of it, has been instrumental to this conditioning.<sup>2</sup> The question is not how many (hi)stories there are, but rather, what these tell us about our drive for survival.

In *Archiving Sovereignty* Motha provides access to an "archive of sovereign violence" (p.xi); an archive "gathered, mediated, and sustained by law" (p.xi). The focus here is on the "unsolved violence" (p.4) concerning several islands in the Indian ocean region. These include the British and American governments and the Chagos Archipelago; the Australian government and the Nauru island and its Northern Territory area; and the post-apartheid skeleton in the South African government's closet. Motha argues that the law, reflected through judicial decisions (p.1, 2), documents and therefore sustains (p.1, 9, 24) justifications of dominance "by states with imperial histories" (p.2, 20). Significantly, the law becomes an

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<sup>1</sup> Jalal ad-Din Muhammad Rumi is a Persian poet and Sufi master from the 13<sup>th</sup> Century. These are lines from two different poems: *Unfold Your Own Myth* and *On The Turn*.

<sup>2</sup> See for example Gascoigne John, 'The Expanding Historiography of British Imperialism' (2006) 49, 2 *The Historical Journal* 577.

archivist (p.2), a present-living-memory, of bodies (chapter II), of facts (chapter III) and of belongs (chapter IV), who have suffered and perhaps been destroyed under *a* sovereign egoic struggle for survival.

Typical of critical legal writing, *Archiving Sovereignty* challenges our conditioned perception about the sovereign State. Most of us learn and teach it, as if it were a concept to be taken at face value, where we are told that it is *it* who sustains law and not vice versa. The substance of the exposed archive in the text is fascinating, but the reading is not made easy by the gems of theoretical narratives scattered within the examination of the archive. The reading becomes at times demanding; long sections aiming at clarifying concepts used by the author makes the reading strenuous. However, along with the case studies discussed in the text, the preface and the epilogue add an almost liberating, humbling, human touch.

*Archiving Sovereignty* is arguably a history book; it “concerns the history-work of law” (p.2). Its examination is present; it arches back to the past to grasp the violence still resonating in a present-future. And this is why *Archiving Sovereignty* needs to be read. This is a story about survival, albeit not a heroic one; it is a story about suffering, the fixation on myths and the chain-production of expendable life.

The main protagonist is the law, or judicial decisions; Motha tells us that it is *it* who sustains and recognises sovereignty long ago replaced by another (p.4, 8). And this is necessary, not least because it is said that sovereignty is a lonely beast (chapter I). Its suffering is conditioned by the need to separate itself because it is fearful of being overturned, of being challenged- of being told that its actions represent a political violence which may not be justified any longer. It lives in solitude because anything else is a threat to its egoic self. Indeed, establishing a marine park free from human footprint is far less threatening than the resettlement of the Chagossians once living on the island (p.47)- exiled when Britain and the

United States were convinced the Chagos Archipelago could advance defence and security efforts (p.25). *Archiving Sovereignty* reveals that this usurpation was sustained and justified by the court's belief that the Chagossians will not be able to rise to the Crusoean expectation and civilised the island (pp.38-41, 46)- after all, Robinson Crusoe was European.

Moving the way fear makes us move, means that the sovereign power will move to remove bodies who challenge its border. Fear creates disinhibition; anyone who is not 'moi' - me - is anonymous; hence it can be discarded (p.75). For Motha, this stands for the "abstract recodification of life" (p.67). But this is not driven by power, instead, this is suggestive of "a decline of the nation-state" (p.62). Indeed, *Archiving Sovereignty* unfolds the myth of state power. It is *its* vulnerability which creates, as Motha put it, other "forms of life" (p.62, 67). And whoever is 'other', is certainly expendable; as have been the species of life swept away into the Nauro island to keep Australia's border disinfected (p.53, 54). The egoic self can only engage with its own suffering; hence the lack of empathy. For Motha, the body of the refugee becomes an item, it "is a border" (p.55, 59). The refugee's body is a witness, a document of sovereign violence- "an *archive* of sovereign violence" in itself (p.55, 57, 59).<sup>3</sup>

*Archiving Sovereignty* exposes the fiction of distributing bodies beyond the law, outside the sovereign state's jurisdiction (p.55). The need to "account for the conditions of detention" (p.59) is waived with the court's confirmation that the bodies have moved into Nauru Islands' sovereignty; hence Australia can wash its hands of this (p.58). The inconvenience of Australia directing the refugees into Nauru's detention was merely a "casual connection" and its involvement was "materially supportive, if not a necessary condition" (p.58). This orchestration, Motha tells us, reflects a "destruction of facts", and thus the law itself – by way of judicial decisions – becomes "an archive of destruction" (p.81). This is a masterclass in

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<sup>3</sup> Italic in original.

history writing; and if we were to ignore *Archiving Sovereignty*'s warnings, we too, will be satisfied with this story.

Significantly, *Archiving Sovereignty* urges us to reconsider the records created by the law. These are mythical (hi)stories, grand narratives of heroic sovereign power. For Motha, these bear a fiction (p.88). The court confirmed that the Australian legal system “was built on the monstrous fiction that the native inhabitants were barbarian without a settled law” (p.89). The court however, recreated this fiction; it sustained the present state's sovereignty by establishing conditions for the reclamation of lost-rights (p.90). *Archiving Sovereignty* further tells us that the seeds of fear suffered by colonial sovereignty have germinated in what was supposed to be a post-1994 “South Africa who *belongs* to all who live in it” (p.110).<sup>4</sup> The new sovereignty, it appears, is engaged in destroying facts created by the old (p.116); a history is replaced by another; a murderer according to one (hi)story is now a counterviolence-revolutionist according to another (p.118)- in this case, the killing was targeted against fellow citizens not against the oppressing sovereign power (p.117).

*Archiving Sovereignty* allows us to pause. To recognise the pain and reconnect. Indeed, Motha concludes with this personal reflection: the bus he was travelling on from Colombo to Jaffna was stopped by Vavuniya soldiers; having no Sri Lankan documents, he was pulled aside for checks; anxiety built up as to whether he would be left behind by the bus. But he recalls: “what was evident to me that night was that a gesture, the ethics of waiting for the other, can renew social ties” (p.144).

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<sup>4</sup> Italic in original.

